



**DALLAS COUNTY  
DISTRICT ATTORNEY  
JOHN CREUZOT  
Appellate Division**

ACCEPTED  
05-19-01492-CR  
FIFTH COURT OF APPEALS  
DALLAS, TEXAS  
2/20/2020 4:01 PM  
LISA MATZ  
CLERK

February 20, 2020

FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS  
2/20/2020 4:01:03 PM  
LISA MATZ  
Clerk

Ms. Lisa Matz  
Clerk of the Court  
Court of Appeals, Fifth District of Texas at Dallas  
600 Commerce Street, Suite 200  
Dallas, Texas 75202

RE: *Andrew Anderson v. The State of Texas*  
Court of Appeals Number: 05-19-01492-CR  
Trial Court Number: F19-52721-R  
Letter Brief Regarding Jurisdiction

Dear Ms. Matz:

Please accept this letter as the State's response to this Honorable Court's letter dated February 3, 2020, directing the parties to address whether this Court has jurisdiction to consider Appellant's appeal. The State agrees with this Court's initial determination that it lacks jurisdiction because Appellant did not file a timely notice of appeal.

In a criminal case, an appellate court's jurisdiction is invoked when a sufficient notice of appeal is timely filed. Tex. R. App. P. 25.2(b); *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996). Notice is sufficient if it shows the party's desire to appeal from the judgment or other appealable order. Tex. R. App. P. 25.2(c). Here, it is undisputed that Appellant wished to appeal his conviction, thus satisfying the notice was sufficient. (CR: 75).

Notice of appeal must also be timely. To be timely, a notice of appeal should be filed within thirty days of the day the trial court imposes sentence. Tex. R. App. P. 26.2(a)(1). If filed by United States Post, the "mailbox rule" applies, and a notice of appeal is considered timely if it is received within ten days after the filing deadline if 1) it is sent to the proper clerk, 2) it was placed in an envelope with proper postage, and 3) it was deposited into the mail before the last day for filing. Tex. R. App. P. 9.2(b). This Court cannot suspend the Rules of Appellate Procedure to extend the time limit for filing a



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notice of appeal. *Id.*; *Slaton v. State*, 981 S.W.2d 208, 209 (Tex. Crim. App. 1998) (per curiam).

In this case, the time limits for filing are also subject to the “prisoner mailbox rule.” Under the prisoner mailbox rule, a *pro se* inmate’s notice of appeal “shall be deemed filed at the time they are delivered to prison authorities for forwarding to the court clerk.” *Campbell v. State*, 320 S.W.3d 338, 344 (Tex. Crim. App. 2010).

The trial court imposed Appellant’s sentence October 7, 2019. (CR: 64). His notice of appeal was due thirty days later on November 6, 2019. In this case, the notice was mailed; therefore, Appellant’s notice of appeal was due no later than November 16, 2019. Appellant’s *pro se* notice of appeal was postmarked November 4, 2019. (CR: 76). The notice was not filed with the district clerk until December 2, 2019. (CR: 75).

Appellant argues that his notice of appeal was timely as a matter of law. However, he overlooks the plain language of Rule 9.2(b) and the prisoner mailbox rule – the notice must be sent to the “clerk.”

As this Court noted in its letter, Appellant addressed his notice to “Dallas County Court #265” not the proper clerk. (CR: 76); *See Turner v. State*, 529 S.W.3d 157, 159 (Tex. App.—Texarkana 2017) (distinguishing *Moore v. State*, holding that the plain language of Rule 9.2(b) requires the notice to be sent to the proper *clerk*, not the trial judge)(emphasis added); *but see Moore v. State*, 840 S.W.2d 439, 440-41 (Tex. Crim. App. 1992) (holding the mailbox rule applied even if the proper *clerk* was not identified on the envelope)(emphasis added).

Contrary to Appellant’s argument, the receiving department of the Frank Crowley Courts Building cannot be deemed an “agent of the district clerk” when the envelope was addressed to a court and not a clerk. Because Appellant addressed his notice to the trial court and not a clerk within Frank Crowley, Appellant has failed to show that he timely filed a notice of appeal and conferred jurisdiction on this Court.



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This appeal should be dismissed for want of jurisdiction.

Respectfully submitted,

/s/ **M. Paige Williams**

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